In the High Court of Judicature at Madras

Dated:27.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. TAMILVANAN

Writ Petition No.24900 of 2001

A.V.Rajasekaran .. Petitioner

vs.

1. The Union of India,
   rep. By its Secretary to Govt.,
   Ministry of Home Affairs,
   New Delhi.

2. The Deputy Inspector General
   Central Industrial Security Force
   Ministry of Home Affairs
   (West Region) Chembur
   Mumbai 74
   State of Maharashtra.

3. The Commandant
   Office of the Commandant
   Central Industrial Security Force
   Ministry of Home Affairs
   RCFL, Mumbai,
   State of Maharashtra. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to No.V-15014/CISF/RCFL/THAL/DISC/AVR/2K/1998 and No.V-11014/43/2000/Q2-L&R/537 from the file of respondents 3 and 2 respectively and quash the order dated 22.6.2006 made by the third respondent which confined by the second respondent in and by the order dated 13.01.2001.

For petitioner : Mr. D. Saravanan
For respondents : Mr. S. Udayakumar, S.C.G.S.C.

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

Aggrieved by the orders of the respondents 2 and 3 dated 13.1.2001 and 22.6.2000, the petitioner has filed the above writ petition to quash the same.

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2. The case of the petitioner is briefly stated as under:-

The petitioner was appointed as Security Guard on 15.2.1972 in the Central Industrial Security Force (CISF). Lastly, he was promoted as Head Constable and posted at CISF Unit, RCF Thal on 11.7.1997 from CISF Unit, ONGC, Ahamedabad. On 24.2.2000, he was deployed for duty at the main gate , RCFL Thal for 12 hours from 5.00 hours to 17.00 hours with rifle. While he was performing the duty, at about 11.45 hours, one S.M.Hirde who was looking after the duty of Inspector Plant had a doubt against the petitioner and called him to the Office of CIW of the Unit, where the petitioner was asked to disclose the items kept in his pocket and the petitioner displayed ten rupee notes 19 in number and two coins of Rs.5/- each, totalling Rs.200/-. The petitioner was enquired for violating the order dated 27.5.1997 and the further order dated 14.12.1998 wherein it is stated that no personnel, while on duty, shall keep more than Rs.10/- and if they keep more than Rs.10/- they shall inform the same to the Shift In-charge Officer, who, in turn, shall record it in the Duty Register. The petitioner explained to the Officers in the Main Gate that he brought the money from his home to purchase medicine for his sick wife. Without considering his explanation, a charge memo was issued on 28.3.2000 by the third respondent, for which the petitioner offered explanation on 18.4.2000. But, without considering his explanation, the third respondent ordered for domestic enquiry on 24.4.2000. On the side of department six witnesses were examined and six documents, Exs.P-1 to P-6 were marked. On the side of petitioner, the petitioner examined himself as D.W.1 and marked Exs.D-1 and D-2, namely, prescription given by the doctor and Medical Bill. During enquiry, all prosecution witnesses have categorically admitted the fact of ill-health of petitioner's wife. The Enquiry Officer, without considering all the material facts, oral evidence and documents, submitted his report holding that the charge against the petitioner is fully proved. Thereafter, the third respondent called upon the petitioner to offer his submissions on the enquiry report and the petitioner sent a reply on 9.6.2000. However, the disciplinary authority, third respondent herein, without considering his lengthy and clean service of more than 28 years in CISF, passed a final order on 22.6.2000 holding that the charge levelled against him is fully proved beyond any reasonable doubt and imposed punishment of compulsory retirement from the date of receipt of order.

3. Aggrieved by the said order, the petitioner preferred an appeal on 4.8.2000 before the second respondent, who, by order dated 13.1.2001, rejected the appeal stating that there are no extenuating circumstances warranting interference with the punishment imposed by the disciplinary authority. Questioning those orders, the petitioner has filed the present writ petition.

4. On behalf of the respondents, the third respondent has filed a counter affidavit disputing various averments. A preliminary objection was raised to the effect that this Court has no territorial jurisdiction to decide the issue. Regarding merits, the third respondent has reiterated the reasons stated in the orders passed by both the authorities and prayed for dismissal of the writ petition.

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5. We have perused the relevant materials and considered the rival contentions.

6. Regarding territorial jurisdiction of this Court, it is true that the charge memo was issued and the ultimate order compulsorily retiring the petitioner from service was passed by the third respondent at Mumbai. It is equally true that the appellate order was also passed by the second respondent in Mumbai. However, learned counsel appearing for the petitioner highlighted that the charge memo and all notices were sent to the petitioner's residential address at Tamil Nadu and the petitioner submitted his explanation only from Tamil Nadu. He also brought to our notice that the petitioner filed appeal to the second respondent from Tamil Nadu itself and when the second respondent did not pass orders on the appeal, the petitioner filed a writ petition in W.P.No.20683 of 2000 before this Court and this Court by order dated 18.12.2000, directed the second respondent to dispose of the appeal within three months from the date of receipt of copy of the order and pursuant to the said order, the second respondent passed orders on 13.1.2001 dismissing the appeal filed by the petitioner. It is not in dispute that in the earlier writ petition the Department did not raise any objection regarding territorial jurisdiction of this Court. Further, in view of the fact that the petitioner received charge memo, notices and all orders at his address in Tamil Nadu and he also submitted his explanation and preferred appeal to the appropriate authorities only from his home town at Tamil Nadu and in the absence of any serious objection by the Department, we hold that this Court has got territorial jurisdiction to file this writ petition.

7. Now, let us consider the case of the petitioner on merits. The statement of Article of Charge framed against the petitioner reads as under:-

> "Gross misconduct and violation of lawful orders in that No.721390068 HC/GD A.V.Rajasekharan of CISF Unit RCF Thal was found in possession of Rs.200/- (Rupees two hundred) against the declared amount of Rs.10/- (Rupees ten) on 24.2.2000 at Main Gate, CISF Unit, RCFL Thal by way of collection of illegal money when checked by Inspector/Exe S.M.Hirde. Hence, the charge."

On receipt of the above charge memo, the petitioner submitted his explanation on 18.4.2000, wherein it is categorically stated that he had inadvertently kept the amount of Rs.200/- in cash and since the doctor attended on his wife prescribed medicine on the night of 23.2.2000, to purchase medicine he kept the cash safely in his pocket. It is also stated that in a moment of urgency coupled with lack of understanding regarding seriousness and consequences of his action, he failed and neglected to record the existence of cash in the Register meant for the same.

8. In the enquiry, to substantiate his defence, the petitioner produced Exs.D-1 and D-2, namely, the Doctor's prescription and medical bill, besides examining himself as D.W.1. Learned counsel appearing for the petitioner further submitted that all prosecution witnesses, particularly, P.Ws.1,3,5 and 6 supported the defence taken by the petitioner. Therefore it has become relevant to refer the answers given by P.W.6 in his cross-examination, which are as under:

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"Cross examination by HC/GD A.G.Rajasekharan of P.W.06:

1 Had I informed you that my wife is sick while I was on duty on that date?

Ans: No, you have not informed me on the same day, but I heard.

2 While I was on duty, did I tell you that I have to purchase some medicine from Alibag?

Ans: Yes

3 I was checking the vehicles and you were performing duty at the gate, did you see me taking any illegal gratification from any Truck Driver?

Ans: No

4 Did anyone inform you that I am collecting any money from drivers while I was checking vehicles?

Ans: No

5 While I was performing duty on 24.2.2000 did you have any doubt about me?

Ans: No"

9. P.W.1 in his cross-examination has fairly admitted that the petitioner did not collect any amount by way of illegal gratification from Truck Drivers. The following answers by P.W.1 support the case of the petitioner:

"3 While I was performing duty whether anyone has informed you about my collecting any type illegal gratification from Truck Drivers which I was checking?

Ans: No

4 Whether you have seen taking any money from any driver while I was checking the incoming vehicles?

Ans: No. I have not seen

5 While I was performing duty at the gate during that time another constable and one sub officer was also performing duty, did you get any doubt about those personnel?

Ans: When I came at the gate I saw that Y.G.Thakre and ASI/Ex Sawant Ram was performing their duties in their place and I had no doubt their performances during that time."

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9. P.W.3 has also admitted the stand taken by the petitioner which is evident from the following answers:

"5 When I was checking the vehicles outside the Gate, did you have any complaint against me?

Ans: No

6 When I was checking the incoming vehicles, did any driver or any other cleaner complained against me to you?

Ans: No

7 While I was checking vehicles did you see my collecting any money from any person?

Ans: No

8 My wife was sick. Did you know on that day?

Ans: No. I was not knowing that your wife was sick on that day but later on I came to know.

9 Do you know that on the same day I was to purchase some medicine from market on the same day?

Ans: No, you did not inform me on the same day but after the incident I came to know."

10. P.W.5 in his cross examination as accepted the stand taken by the petitioner which is evident from the following answers:

"1 When I took out money from my pocket and kept on the table and being asked by Insp/Exe S.M.Hirde as to where from I got this money I replied that I has brought this amount from my home, Did you hear this conversation?

Ans: Yes.

2 When I told Ins/Exe S.M.Hirde that i had brought this money from my home, for purchase of medicines for my wife, did you hear that conversation?

Ans: Yes.

3 During my duty on 24.2.2000, did anyone complain against me?

Ans: No"

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11. Though we are conscious of the fact that this Court is not an appellate authority, however, the fact remains that the categorical admissions made by the prosecution witnesses have not been considered by the appellate authority, second respondent herein. Admittedly, there is no provision for further revision and the only remedy available is to approach this Court by way of filing writ petition. In those circumstances, we have verified the statements of prosecution witnesses as well as the evidence of petitioner and the documents produced by the petitioner, viz., Exs.D-1 and D-2 and as rightly pointed out, we find that the disciplinary authority and the appellate authority have failed to analyse the evidence let in on behalf of the Department, viz., P.Ws.1 to 6 who had categorically admitted that neither the petitioner received any illegal gratification from anyone, nor they received any complaint against the petitioner alleging that he collected money from any person.

(Emphasis supplied)

12. The authorities have failed to consider the admission made by the complainant/Officer, P.W.1 to the effect that he has not seen the petitioner taking any money from any driver. We are of the view that the authorities ought to have accepted the explanation of the petitioner that he kept Rs.200/- in his pocket, while on duty, only to purchase medicine for his wife who was sick as evident from the assertion made by the petitioner as D.W.1 and Exs.D-1 and D-2. It is also relevant to point out that the petitioner was not involved even in a minor incident or any adverse remarks was recorded against him during his lengthy 28 years of service. It is also demonstrated that the statement made by the appellate authority that the petitioner had earlier been punished for gross negligence of duty is factually incorrect. In any event, according to the petitioner, no reasonable opportunity was given to him in respect of the said issue.

In the light of what is stated above, particularly, in view of the explanation offered by the petitioner by means of oral evidence as D.W.1 and documentary evidence of Exs. D-1 and D-2, viz., Doctor's prescription and medical bill, coupled with the categorical admission made by P.Ws.1, 3, 5 and 6 in cross-examination, and in view of the fact that the petitioner had unblemished service of 28 years as evident from materials available, we are satisfied that the decision arrived at by both the authorities cannot be sustained. Accordingly, the impugned orders passed by the respondents 2 and 3 dated 13.1.2001 and 22.6.2000 are quashed and the writ petition is allowed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary to Govt.,
Ministry of Home Affairs,
Union of India,
New Delhi.

2. The Deputy Inspector General
Central Industrial Security Force
Ministry of Home Affairs
(West Region) Chembur
Mumbai 74
State of Maharashtra.

3. The Commandant
Office of the Commandant
Central Industrial Security Force
Ministry of Home Affairs
RCFL, Mumbai,
State of Maharashtra.

1 cc To Mr.D.Saravanan, Advocate, SR.45423.
1 cc To Mr.S.Udhayakumar, Advocate, SR.45786.

W.P.No.24900 of 2001

HPR(CO)
RVL 25.10.2006

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